

**INFORMATION SHEET**  
**DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS**  
**RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY**  
**V. U.S. ARMY CORPS OF ENGINEERS**

**DISTRICT OFFICE:** Saint Paul District

**FILE NUMBER:** MVP-2004-002364-RMG

**REGULATORY PROJECT MANAGER:** Rebecca M. Gruber **Date:** March 9, 2005

**PROJECT REVIEW/DETERMINATION COMPLETED:** **In the office (Y/N)** **Y** **Date:** 9 Mar. 2005

**At the project site (Y/N)** **N** **Date:**

**PROJECT LOCATION INFORMATION:**

State: Wisconsin

County: Washington and Brown Counties

Center coordinates of site by latitude & longitude coordinates:

Linear utility project in two counties, not able to determine

Approximate size of site/property (including uplands) in acres

Not able to determine

Name or waterway of watershed: Milwaukee and Lower Fox

3 wetlands in Washington Co. (WA-WL-2, 4, & 9)

| Type of Aquatic Resource <sup>1</sup> : | 0-1 ac | 1-3 ac | 3-5 ac | 5-10 ac | 10-25 ac | 25-50 ac | > 50 ac | Linear Feet | Unknown |
|---|--------|--------|--------|---------|----------|----------|---------|-------------|---------|
| Lake                                    |        |        |        |         |          |          |         |             |         |
| River                                   |        |        |        |         |          |          |         |             |         |
| Stream                                  |        |        |        |         |          |          |         |             |         |
| Mudflat                                 |        |        |        |         |          |          |         |             |         |
| Sandflat                                |        |        |        |         |          |          |         |             |         |
| Wetlands                                |        | Est.   |        |         |          |          |         |             |         |
| Slough                                  |        |        |        |         |          |          |         |             |         |
| Prairie Pothole                         |        |        |        |         |          |          |         |             |         |
| Wet Meadow                              |        |        |        |         |          |          |         |             |         |
| Playa Lake                              |        |        |        |         |          |          |         |             |         |
| Vernal Pool                             |        |        |        |         |          |          |         |             |         |
| Natural Pond                            |        |        |        |         |          |          |         |             |         |
| Other Water (identify type)             |        |        |        |         |          |          |         |             |         |

<sup>1</sup>Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

| Migratory Bird Rule Factors <sup>1</sup>  | If Known |    | If Unknown<br>Use Best Professional Judgment |                       |                                |
|---|----------|----|--|-----------------------|--------------------------------|
|   | Yes      | No | Predicted to Occur                           | Not Expected to Occur | Not Able to Make Determination |
| Is or would be used as habitat for birds protected by Migratory Bird Treaties?  |          |    |  | X                     |                                |
| Is or would be used as habitat by other migratory birds that cross state lines? |          |    |  | X                     |                                |
| Is or would be used as habitat for endangered species?                          |          |    |  | X                     |                                |
| Is used to irrigate crops sold in interstate commerce?                          |          |    |  | X                     |                                |

<sup>1</sup>Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

**TYPE OF DETERMINATION:**                      **Preliminary X   Or   Approved**

**ADDITIONAL INFORMATION SUPPORTING NJD** (e.g., paragraph 1 site conditions; paragraphs 2-3 rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 site information on waters of the U.S. occurring onsite):

Twenty five wetlands and waters were found within the project corridor (linear utility project). Of this total, 3 wetlands in Washington County were determined to lie outside the regulatory jurisdiction of the Corps of Engineers (wetlands WA-WL-2, 4, and 9).

The boundaries of each of the three wetlands lie entirely within Washington County, Wisconsin. As such, all three wetlands are considered intra-state. These three wetlands do not display any connection to, nor are they considered adjacent to (separated by roadway or other anthropogenic structure) any waters of the United States. For both of these reasons, wetlands WA-WL-2, 4 and 9 are considered isolated.

Wetlands WA-WL-2, 4, and 9 are not, nor are they likely to be, used by interstate or foreign travelers for recreation, industry, or commerce. All three wetlands lie on private property, with no public access. In addition, none of the three wetlands contain fish or shellfish which could be taken and sold. For these reasons, no commerce connection to wetlands WA-WL-2, 4, or 9 has been established.

As indicated above, twenty-two other wetlands and waters were found along the project corridor, and all were determined to lie within the regulatory jurisdiction of the Corps of Engineers. All twenty-two waters of the U.S. were found to be part of the tributary system to the Milwaukee River (via Cedar Creek), the Fox River, or Lake Michigan (via the East River). The Milwaukee River, the Fox River, and Lake Michigan are all considered to be navigable waters of the United States.